IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 8916 OF 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RANJANBEN HIMATLAL JOSHI & ANR. - Petitioner(s)
Versus
COLLECTOR, RAJKOT DISTRICT & ANR. - Respondent(s)

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Appearance :
Shri Mehul S. Shah for Petitioner(s) : 1 - 2.
Shri Dipen Desai, Assistant Government Pleader for Respondent Nos.1-2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 25/04/2007

ORAL JUDGMENT

The short facts necessary for disposal of the present Writ Application are that on 28th March, 1978, the petitioners, under a registered sale deed, purchased the land of Plot No.33 admeasuring 678

sq. mtrs. of Survey No.90 of Raiya Village. On 4th April, 1978, Mutation Entry No.3230 was made in the record of rights. It is to be seen that after the petitioners purchased the land, a town planning scheme was brought into action, the scheme was finalised and thereafter, the State Government, *vide* its order dated 4th April, 1989, finalised Town Planning Scheme No.1 and sanctioned the same. The petitioners' original Plot No.33 was consolidated with the other land and ultimately, the petitioners were allotted by the competent Town Planning Officer Final Plot No.178 admeasuring 755 sq. mtrs. The petitioners were asked to deposit the premium-cum-price for the additional land; the petitioners, accordingly, deposited a sum of Rs.4,428/- for the additional area allotted to them. It is to be noticed that on the area of 16.22 sq. mtrs. of the said Final Plot No.178, there existed some encroachment. On 26th October, 1994, the Rajkot Urban Development Authority ("RUDA" for short) granted development permission to the petitioners, sanctioned the plans and as alleged by the petitioners, promised them to remove the said encroachment. It is also to be noted that on 24th October, 1994, Mutation Entry No.6928 was made in the name of the petitioners in relation to the land of Final Plot No.178.

2. On 21st February, 1995, the said Entry No.6928 was certified by the Mamlatdar after due verification. On 14th March, 1995, the petitioners made an application to RUDA for removal of the encroachment. However, before any action could be taken by RUDA, the respondent No.1, that is, the Collector, District: Rajkot, issued a notice to the petitioners on 17th May, 1995 to show cause as to why Entry No.6928 be not taken up in revision and be cancelled. The petitioners appeared before the Collector and submitted their reply, but, disagreeing with the submissions made by the petitioners, *vide* order dated 21st September, 1995, the Collector cancelled Mutation Entry No.6928 and remanded the

matter to the Mamlatdar on the ground of the alleged irregularities committed by the Town Planning Officer while framing and sanctioning Town Planning Scheme No.1. The petitioners challenged the said order before the State Government, but, unfortunately, the said revision was dismissed on 19th July, 1999. Therefore, the petitioners, allottees of Final Plot No.178, are before this Court.

3. Shri Shah, learned Counsel for the petitioners, submits that after finalising of the scheme, the Town Planning Officer was entitled to allot any land from the planned area and the area could be less than the original area, equal to the original area or could even be more than the area, which was earlier held by the petitioners. His submission is that after the Town Planning scheme is sanctioned, the lands belonging to certain people go into development and some lands are joined with the lands of others. In a case where somebody receives lesser area, he would be entitled to compensation, but, the person, who receives additional area, would be obliged to pay the premium-cum-price to the Town Planning Officer so that the said money is paid to the persons, who received the less area or for the purpose of development. His submission is that Entry No.6928 could not be set aside by the Collector unless the Scheme was wholly set aside and the Town Planning Officer was asked to frame the scheme afresh.

4. Shri Dipen Desai, learned Counsel for the State, on the other hand, submits that though Plot No.178 was allotted in favour of the petitioners, but, the additional area, that is, difference between 678 sq. mtrs. (original area) and 755 sq. mtr. (total area of Final Plot No. 178), was never allotted in favour of the petitioners. His submission is that Entry No.6928 was wrong and bad because the petitioners were getting more land than what they were entitled to. His further submission is that

if irregularities were committed by the Town Planning Officer while framing and sanctioning Town Planning Scheme No.1, then, the Collector was entitled to take a note of the same.

5. When a town planning scheme is brought into effect, the land of a particular area is required to be developed in a particular manner, as provided under the Town Planning Scheme. The town planning scheme would chalk out different plots and the purpose for which the particular land would be earmarked. It is common knowledge that when the schemes are framed, some lands go in widening or development of the roads and some plots, which are otherwise small in area, would get extra and additional area and become bigger plots. Some plots, in their total area, may go in the development and some plots may remain unaffected.

6. If the argument of Shri Desai is accepted that a person would not be entitled to any additional area, then, the likelihood of small islands being created in the developed area cannot be ruled out. If the petitioners were only to be allowed 678 sq. mtrs., then, the area of 77 sq. mtrs. would have come into existence and would have been otherwise waste. To meet out such exigencies, such additional area is always allotted along with the original entitlement to the person and as he is getting something more, the premium-cum-price is always recovered from him.

7. Town Planning Scheme No.1 was finalised by the Town Planning Officer and the same was sanctioned by the State Government. Once the scheme is sanctioned by the State Government, then, the said scheme becomes a part of the Act and none can challenge the scheme before any subordinate authorities because such scheme is required to be

challenged before the High Court only. The manner of allotment to be made under the scheme are to be considered by the Town Planning Officer. If the Town Planning Officer was of the opinion that Plot No.178 was to be created and allotted to the present petitioners, then, he was entitled to exercise his discretion and none could challenge the same. The allotment of a particular plot in favour of the erstwhile owner or to any other person, whose land has been taken in the Town Planning Scheme, would amount to conferral of the ownership rights on such a person. When the Town Planning Officer creates the ownership under the scheme in favour of the somebody, then, on the strength of the said ownership, such person would be entitled to mutation of his name in the records of rights. The Town Planning Officer whether committed illegality or irregularity while framing or sanctioning the Scheme, would not be the question to be considered by the authority, which has to make an entry in accordance with the revenue instructions. If the Collector is allowed to hold that there was an irregularity or illegality while framing and sanctioning the town planning scheme, then, we have to assume powers in favour of the Collector to supersede the Scheme, which has been certified and sanctioned by the Government, and, to set aside part of the Act itself. Such jurisdiction the Collector does not have.

8. The respondent No.2 (State Government), unfortunately, without appreciating the scope of the revision and without appreciating the powers of the Collector, under the revenue circulars, simply confirmed the order, less realising that the State Government had approved, finalised and sanctioned Town Planning Scheme No.1 on an earlier occasion. If the order of the State Government passed in the present matter is allowed to stand, then, it would lead to an incongruous and impossible situation because on one side the Scheme stands sanctioned by the Government and at the same time, the State

Government agrees with the findings recorded by the Collector that the Town Planning Officer, while framing and sanctioning Town Planning Scheme No.1, committed irregularity and illegality.

9. The Collector of a district must always know the limits of his jurisdiction. He is not an uncrowned king, who can interfere into any matter. The Collector or the Secretary is bound by the limits of his jurisdiction. The road reality may be different, but, the legal reality, which confers powers upon such officers, would always clip them and they would not be entitled to exercise such powers, which are not vested in them.

10. In the opinion of this Court, the Collector was not entitled to set aside the revenue Entry No.6928, nor the State was entitled to confirm the findings of the Collector, nor could the State hold that the Town Planning Officer, while framing and sanctioning the Town Planning Scheme No.1, committed irregularities and illegalities. The petition is allowed with costs. The orders dated 12th September, 1995 passed by the Collector, Rajkot and 25th May, 1999 passed by the Additional Chief Secretary, Revenue Department (Appeals) are hereby quashed. Rule is made absolute. The costs of Rs.10,000/- be paid by the State Government because the petitioners had to suffer the trauma and expenses in view of the illegal actions of the Collector and the State Government. The costs shall be paid by the State within four weeks from today.

[R.S.Garg, J.]

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